

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

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Appeal of Town of Nottingham
Docket No. 04-15 WC

OBJECTION TO MOTION TO RECONSIDER

NOW COMES the Department of Environmental Services ("Environmental Services"), by and through its attorneys, the Office of the Attorney General, and respectfully objects to the Motion to Reconsider filed on behalf of the Town of Nottingham. In support of this Objection, Environmental Services states as follows:

1. This is an appeal of a large groundwater withdrawal permit issued to USA Springs pursuant to RSA ch. 485-C. By Order dated January 13, 2005, the Water Council decided not to accept the appeal. Nottingham has previously filed a Motion to Reconsider, and has filed a second Motion to Reconsider dated February 8, 2005. The State has previously filed an Objection to the first Motion to Reconsider. This Objection relates to the second Motion to Reconsider.

2. Nottingham's Motion should be denied as it fails to raise issues not previously considered by the Council and should be denied as a matter of law.

3. RSA 485-C:21, VI provides the only means by which appeal can be taken of a decision under the large groundwater withdrawal permit statute. Specifically, RSA 485-C:21, VI states:

Rehearings and appeals from a decision of the department under this section shall be in accordance with RSA 541.

4. RSA 541, which governs appeals in this case, requires (1) a motion for rehearing be filed with Environmental Services (RSA 541:3) and (2) an appeal after a decision on the motion for rehearing can only be filed with the New Hampshire Supreme Court (RSA 541:6).

5. It is a standard rule in determining the meaning of a statute that (1) statutory provisions should be given meaning; (2) the legislature is presumed to know about other statutory provisions it has passed; and (3) specific provisions mean more.

6. RSA 485-C:21, VI provides the only means to appeal a decision under the large groundwater withdrawal permit statute. Specifically, RSA 485-C:21, VI states:

Rehearings and appeals from a decision of the department under this section shall be in accordance with RSA 541.

“Department” is defined as the Department of Environmental Services.

a. Appellant’s argument would render RSA 485-C:21, VI meaningless, thus violating the standard rule of statutory construction.

7. By allowing for an appeal under RSA 21-O, the Appellant would render meaningless the specific statutory appeal requirements under RSA 485-C:21. Under Appellant’s theory, the exact same appeals process would follow with or without the requirement that appeals follow the RSA 541 procedure. Appellant’s argument, therefore, violates one of the first tenants of statutory construction to give meaning to statutory provisions.

8. RSA 541, which governs appeals in this case, requires (1) a motion for rehearing be filed with Environmental Services (RSA 541:3) and (2) an appeal after a decision on the motion for rehearing can only be filed with the New Hampshire Supreme Court (RSA 541:6).

9. Given the specific, unambiguous, language that requires all appeals of large groundwater withdrawal permits go directly to the Supreme Court, the Water Council does not have jurisdiction to hear the appeal filed by the Town of Nottingham. An appeal from the decision of Environmental Services is directly to the Supreme Court.

10. Therefore, the Council’s decision to dismiss the appeal is legally correct, and the Town’s Motion to Reconsider should be denied.

WHEREFORE, for the reasons as stated above, Environmental Services respectfully requests that the Council:

- A. Deny the Town's Motion to Reconsider as being premature; or
- B. Dismiss the Town's Motion to Reconsider as it fails to raise any issues of law or fact not previously considered by the Council, and the Council's decision is legally correct; and
- D. Grant such other relief as the Council deems just and equitable.

RESPECTFULLY SUBMITTED

State of New Hampshire
Department of Environmental Services

By its Attorney,
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By:

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CERTIFICATION

I certify that a copy of this Motion has been forwarded via facsimile and first class mail to E. Tupper Kinder, Esq., Mark Beliveau, Esq., Amy Ayotte, Esq., and Bill McCann.

Richard W. Head